IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1164 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC & 1 - Petitioner(s)

Versus

PATEL BECHARBHAI JERAMBHAI MAKWANA - Respondent(s)

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Appearance :

MR DIPEN A DESAI for Petitioner(s) : 1 - 2.
MS SEJAL K MANDAVIA for Respondent(s) : 1,
MR SP MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/02/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners – Gujarat State Road Transport Corporation and another have

challenged the legality and validity of the order passed by the learned Extra Assistant Judge, Junagadh dated 24.11.1998 passed in Regular Civil Appeal No.99/1998 by which the learned Judge has allowed the said appeal by quashing and setting aside the order passed by the competent officer dated 10.8.1998 passed in Eviction Case No.2/1997 by which the competent officer under the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act; 1972 (herein in after referred to as 'The Act') has directed the respondent herein to hand over the possession of the shop in question to the petitioners and also to pay an amount of Rs.1,17,873/- being the mesne-profit/rent for the period between 20.4.1977 to 31.7.1998.

2. After the matter was fully argued by the learned advocates appearing on behalf of the parties and this Court was to allow the present Special Civil Application by quashing and setting aside the judgment and order passed by the leaned Extra Assistant Judge, Junagadh dated 24.11.1998 passed in Regular Civil Appeal No.91/1998 restoring the order passed by the competent officer dated 10.8.1998 passed in Eviction Case No.2/1997, Shri S.P.Majmudar, learned advocate

appearing on behalf of the respondent has submitted that the respondent is ready and willing to pay more rent and if ultimately the shop in question is leased after holding public auction than the respondent be given priority as the respondent is in long possession of the shop in question and that he is running the medical shop since many years. Shri D.A.Desai, learned advocate appearing on behalf of the petitioners has submitted that if on public auction everything is equal i.e. offering the rent as per the highest offer and the respondent is ready and willing to pay the said rent than an appropriate order may be passed to give priority to the respondent.

3. Considering the above submissions, the order passed by the learned Extra Assistant Judge, Junagadh dated 24.11.1998 passed in Regular Civil Appeal No.91/1998 is hereby quashed and set aside and it is ordered that the shop in question be leased (if the petitioner – Corporation wants to give the shop in question on lease) by holding public auction and it will be open for the respondent to compete in the said public auction and if everything is equal and the respondent is ready and willing to offer rent as per the highest

offer in the said public auction than the priority be given to the respondent. Such an exercise to be done i.e. the shop in question be leased by public auction as stated above within a period of two months from the date of receipt of this order and until then, the respondent may not be evicted from the shop in question i.e. till an appropriate decision is taken by holding public auction as stated above. If the respondent agrees to pay the rent as per the highest offer, which may be offered in the public auction and it is decided to lease the shop in question to the respondent by giving priority as stated above than the same may be done accordingly however, if the respondent does not offer to pay rent as per the highest offer to be offered in public auction and it is decided to lease the shop in question to other person in that case, the respondent is directed to hand over the peaceful and vacant possession of the shop in question to the petitioners within a period of seven days from such finalization. So far as the mesne-profit/rent for the interregnum period which is due and payable to the petitioner – Corporation is concerned, the respondent is directed to pay the same and it will be open for the petitioners to recover the same from the respondent

without prejudice to the rights and contentions and without accepting the respondent as a tenant and/or by such acceptance it may not be construed that the lease in favour of the respondent is renewed.

4. With these observations and direction, the present Special Civil Application is disposed of. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.